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Res Gestae

Law School History and Publications

1963

Vol. 15, No. 14, December 6, 1963

University of Michigan Law School

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Recommended Citation

University of Michigan Law School, "Vol. 15, No. 14, December 6, 1963" (1963). *Res Gestae*. Paper 918.
http://repository.law.umich.edu/res_gestae/918

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UNIVERSITY OF MICHIGAN
LAW SCHOOL

Res Gestae

Last issue!

Roger Marce, Editor

PUBLISHED WEEKLY BY

THE LAWYERS CLUB OF THE UNIVERSITY OF MICHIGAN LAW SCHOOL

VOL. 15

DECEMBER 6, 1963

NO. 14

JOINER RENEWS ATTACK ON PROPOSED "COURT OF THE UNION:"

Addressing the 62th National Conference on Government, in Detroit, last month, Associate Dean Charles Joiner vigorously attacked the idea of a "Court of the Union" which would outrank the U.S. Supreme Court. A long-time opponent of such a body, he branded the proposal as "preposterous."

"And yet," he said, "four state legislatures have memorialized Congress to call a Convention for the purpose of proposing this amendment (to the Constitution)." Joiner recalled that the proposal to create a Court of the Union has been put forward by an organization known as the Council of State Governments. This Court, according to the proposal, would be required to review the judgments of the Supreme Court on matters involving rights reserved to the states or to the people by the Constitution. This power could be invoked by the demand of the Legislatures of five states.

The whole idea, Joiner told the conference, is "defective." First, "it would destroy the Supreme Court as an effective body." Another result would be "constitutional paralysis," while, he added, "It is not unlikely that such a court would produce decisions of a highly parochial nature." Above all, he said, "This proposal would bring all matters involving these questions into the realm of state-house politics...It is preposterous to think that the gateway to justice and judicial decisions lies through the beneficence of the legislature.

"In addition to this, the judges of the (Court of the Union) would be mainly elected officers serving for short terms whose votes on these matters would be subject to discussion and review by the voters in a given state, without any sense of obligation to the country as a whole." Joiner noted that the Bar "has finally awakened to the enormity of this proposal." The State Bar of Michigan recently adopted by unanimous action a resolution condemning the Court of the Union proposal.

The Supreme Court of the United States, Joiner pointed out, was established by the Constitution to be "the arbitrator of the division of powers between the federal and state governments..." Had this body not worked out so well, it would not be under the attack that it is today. Its troubles...stem from the fact that it has done a task too well."

Among its accomplishments, as noted by Professor Joiner: "It has applied the federal supremacy clause...It has applied the equal protection clause of the Fourteenth Amendment in the apportionment cases and in the civil rights cases." In so doing, Joiner said, "In upholding the language and the spirit of the Constitution of the United States, the Supreme Court has alienated important and powerful people, people who apparently do not believe in union but believe in confederation.

"These men are very powerful and are particularly powerful in state government. They apparently have forgotten that confederation failed and that it was only through union, only through federal supremacy, only through the growth of states together, that this country has reached its place of economic and social power, and the citizens have attained the highest standard of living found anywhere."

EDITORS' WASTEBASKET:

The University has announced that a total of 1770 degrees will be awarded at Commencement exercises here on December 19. Secretary of Labor, W. Willard Wirtz will deliver the Commencement address, at Hill at 2:00. After the exercises, there will be a tea given by President and Mrs. Hatcher in the League Ballroom.

Professor Plant recently spoke on "Areas of Expanding Liability for Personal Injuries," at the U of M Club in Lansing...Mr. Paul F. Rothstein has published an article entitled "A Re-evaluation of the Privilege Against Adversal Spousal Testimony in the Light of Its Purpose..." And Professor Kimball published an article in the Norwegian Insurance Journal.

A recent study has conclusively shown that smoking increases your chances of contracting cancer, that nervousness increases your chances of becoming a smoker, and that law professors increase your chances of becoming nervous. Ergo, law professors cause cancer.

We are indebted to the Catholic University's "Legal Issue" for notes on the following case. Ashley was visiting in Yellowstone Park. While his wife was driving he slept with his arm extended out of the opposite window. While stopped by a "bear jam" Ashley awoke to find his arm, up to the elbow, in the mouth of a bear, who was busily munching on it. As a result he underwent great medical expense and pain and suffering. Being unable to serve the bear, plaintiff sought his remedy against the government, suing on a theory of "respondeat superior." He felt that the beast had been employed by the government "to amuse and delight the public with his antics;" and that this servant was within the scope of his employment. He pointed out that many spectators watched with glee, taking pictures while cheering the efforts of the plaintiff to free his arm from the bear. The United States defended on theories of "frolic and detour," and contributory negligence (feeding the bears, contra to park regulation). It also counter-claimed for injury to the bear, "namely indigestion, caused by plaintiff's feeding the bear 'certain filthy, noxious and poisonous matter, to wit, flesh....'" The government won on the basis that the "discretionary function of duty" exception of the Tort Claims Act was applicable.

As a result of his efforts to organize a counter-march to Washington, at the time of the Freedom March this summer, George Lincoln Rockwell, "Fuhrer" of the American Nazi Party has been indicted under a Virginia law which makes it illegal to "incite the white population of the State to acts of violence and war against the colored population...." This will be the initial application of the statute, which has been on the books for 90 years.

LIBEL AND SLANDER:

The Res Gestae would like to take this opportunity to thank everyone whose support, or criticism has helped to make this semester's issues what is hoped to have been satisfying reading. We wish everyone a Merry Christmas and a Happy New Year.

- H.V. Baxendale

MISCELLANEOUS:

The Law Library announces a slight change in its hours for the coming weeks: OPEN - Saturday nights, Dec. 7 and 14; CLOSED - Christmas Eve and New Year's Eve... Tomorrow noon is the deadline for boarders to pick up their \$1.00 refund for the meal missed last month.

AT THE FLICKS:

Campus: "Mouse on the Moon"

Michigan: "Under the Yum Yum Tree"

State: "McLintock"

Cinema Guild: Fri.- "Pather Panchali"; Sat.- "Cabinet of Dr. Caligari"

QUADSVILLE QUOTES:

Ask not what your country will do for you--ask what you can do for your country.

- John F. Kennedy

I am a free man, an American, a United States senator, and a Democrat, in that order.

- Lyndon B. Johnson



Merry
Christmas!!